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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/121,300	07/23/1998	BRUCE G. KANIA	OHI 1717-096	3160

8698 7590 10/01/2007  
STANDLEY LAW GROUP LLP  
495 METRO PLACE SOUTH  
SUITE 210  
DUBLIN, OH 43017

EXAMINER
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WILLSE, DAVID H

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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10/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# **Supplemental Notice of Allowability**

Application No.

09/121,300

Examiner

Dave Willse

Applicant(s)

KANIA ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment of July 5, 2007, and the Terminal Disclaimer of August 6, 2007.
2. ☒ The allowed claim(s) is/are 75-77,80,85,88,89,92-94,96,99,102,103,106,107,110,111,114,115,118-121,124-133,135-142,144-151,153-160 and 162-165.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.   |

The Notice of Allowability of August 13, 2007, was inadvertently mailed to the wrong address by the USPTO. Therefore, the statutory period for payment of the issue fee has been reset to commence from the mailing date of the instant communication. (Attention is directed to the attached form PTOL-85.)

After further review of the present application, the examiner concluded that instant claim 75 and others were subject to rejection on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,964,688. For example, claim 75 would have been obvious to the ordinary practitioner from claims 1, 6, and 12-16 of said patent. In order to expedite prosecution, the examiner telephoned Attorney Eric M. Gayan to request a Terminal Disclaimer relative to said patent, with the present application otherwise being in condition for allowance except for the minor informalities corrected below.

The Terminal Disclaimer filed on August 6, 2007, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. patent no. 6,964,688 has been reviewed and is accepted. The Terminal Disclaimer has been recorded.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for the examiner's amendment to claim 124 was given in a telephone interview with Attorney Eric M. Gayan on August 6, 2007, on which date it was called to the examiner's attention that the inventorship change approved in the Office action mailed on November 9, 1998, did not appear to be properly entered in the records of the USPTO.

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Accordingly, this oversight by the USPTO has now been corrected, and the Applicant is thanked for noting the problem.

In claim 124, line 3, "a" has been replaced by --said--, and

"an" has been replaced by --said--.

As authorized in the Applicant's application transmittal of July 23, 1998, the following has been inserted at the beginning of the specification on page 1:

-- This application is a continuation of prior U.S. application serial no. 08/611,306, filed on March 5, 1996, now U.S. patent no. 5,830,237. --

The following additional changes have been made to the specification in order to correct minor informalities and are consistent with the disclosure of U.S. patent no. 5,830,237:

On page 5, line 6, "silicon" has been replaced by --silicone--.

On page 9, line 11, "Figure 1 shows" has been replaced by --Figures 1a and 1b show--;

on line 13, "Figure 2 shows" has been replaced by --Figures 2A and 2B show--;

on line 17, "Figure 3 shows" has been replaced by --Figures 3a-c show--;

on line 25, --tube sock-shaped-- has been inserted after "a".

On page 10, line 1, --tube sock-shaped-- has been inserted after "a";

on line 3, --tube sock-shaped-- has been inserted after "invention";

on line 11, --tube sock-shaped-- has been inserted after "invention".

On page 32, line 5, -- ) -- has been inserted after "wt%".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who is generally available Monday, Tuesday, and Thursday, and sometimes on Wednesday. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

A handwritten signature in black ink, appearing to read 'Dave Willse', is positioned above the printed name.

**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**